FILED

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

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U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

Grants Mill Road Redemption Company	:	
	:	
Vs.	:	C.A No. 14-
	:	
Eric K. Shiseki, in his capacity as Secretary of Veteran's Affairs and Wells Fargo Bank, N.A.	:	CA 14- 08 M

COMPLAINT

Parties

1. Plaintiff is a Rhode Island partnership.
2. Defendant Eric K. Shiseki is currently the Secretary of Veteran's Affairs, (hereinafter referred to as "the Secretary"), and based upon information and belief, is a resident of the District of Columbia. The United States Department of Veterans Affairs has its principal business address at 810 Vermont Avenue NW, Washington, D.C. 20420.
3. Defendant Wells Fargo Bank, N.A. (hereinafter referred to as "Wells Fargo"), based upon information and belief, is a foreign corporation authorized to do business within the State of Rhode Island and has a business address of 1 Home Campus, Des Moines, IA 50328.

Jurisdiction and Venue

4. This Honorable Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) and the matter in controversy exceeds $75,000.00 exclusive of interest and costs, and because the Defendant is a foreign resident.
5. This Honorable Court has also supplementary jurisdiction over the state court claims included herein pursuant to 28 U.S.C § 1337 and jurisdiction to declare the rights of the parties without further relief pursuant to 28 U.S.C. § 2201.

6. Further, this Honorable Court has jurisdiction over matters against the United States of America with regard to quieting title matters where the United States claims an interest in the property pursuant to U.S.C. § 2409(a).
7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 b) (2) in that a substantial part of the events or omissions giving rise to this claim have occurred, and the real property that is the subject of this action is situated within the State of Rhode Island.
8. Plaintiff further avers that the Plaintiff has redressible claims over the matters in this complaint pursuant to the following statutes:

a) Plaintiff, pursuant to 42 U.S.C. § 1983 claims loss of state property rights to redeem its mortgage from an unauthorized foreclosure advertiser without a judicial hearing.

b) Plaintiff claims ownership of the latter described premises and seeks to clear its title of all illegal encumbrances pursuant to the provisions of Rhode Island General Laws § 34-16-4.

c) Plaintiff claims that only it has a marketable title to the premises pursuant to the provisions of R.I.G.L. § 34-13.1-5, to wit, forty (40) years of ownership of the fee interest.

d) Plaintiff, may seeks to redeem, pursuant to R.I.G.L. § 34-26-1, the mortgage note and mortgage deed from the actual mortgagee, or lawful assignee of the mortgage deed and note.

e) Plaintiff claims a judicial determination pursuant to R.I.G.L. § 9-30-2 whether its deed to the premises is affected by any conveyance of another person in its chain of title.

f) Plaintiff seeks to appoint a trustee pursuant to R.I.G.L. § 34-4-7 to sell the property if it cannot be redeemed.

9. Pursuant to the mortgage deed executed by Plaintiff's predecessor in title, "This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with the Applicable Law, such conflict shall not affect other provisions of this Security Agreement or the Note which can be given effect without the conflicting provision.

10. Further, pursuant to the mortgage deed executed by Plaintiff 's predecessor in title, Defendant acknowledges specific contractual obligations between the parties, as stated in the mortgage deed regarding notice prior to acceleration by the mortgagee, "The notice shall further inform Borrowers of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrowers to acceleration and sale." (emphasis added).

11. A foreclosure has been conducted without a judicial review of the chain of title of the Plaintiff's premises.

Title Facts

12. On June 4, 2010, Edward A. Acquisto and Tanya P. Acquisto, were conveyed a warranty deed from Charles A. Paul and Maureen J. Paul for certain improved real estate located at

14 Grants Mill Road, Cumberland, Rhode Island and same was recorded on June 23, 2010 in the Cumberland, Rhode Island land evidence records in book 1499 at page 279.

13. On June 22, 2010, Edward A. Acquisto and Tanya P. Acquisto as mortgagors, executed a putative promissory note and putative mortgage deed in favor of Mortgage Electronic Registration systems, Inc. (hereinafter referred to as "MERS") as nominee of Franklin American Mortgage Company (hereinafter referred to as "Franklin") in the sum of Three Hundred Eighty Three Thousand Sixty Two and 00/100 ($383,062.00) Dollars, as recorded in the Cumberland, Rhode Island land evidence records in book 1499 at page 281.
14. On August 24, 2010, MERS allegedly assigned the Acquistos' mortgage to Defendant Wells Fargo, as recorded in book 1590 at page 375.
15. Wells Fargo commenced foreclosure proceedings against the Acquistos without a judicial hearing and had a purported foreclosure sale on or about July 18, 1013.
16. Wells Fargo then conveyed to the Defendant Secretary a Foreclosure Deed dated August 15, 2013 and recorded on September 13, 2013 in book 1628 at page 368.
17. Further, on August 14, 2013 Wells Fargo purportedly assigned its "bid and all of its right, title and interest in and under a Memorandum of Sale of Real Property by Auctioneer" to the Secretary.
18. No agent or representative of Wells Fargo was present at the purported foreclosure sale to bid on the property.
19. On October 21, 2013, the Acquistos conveyed their interest in the property to Plaintiff by Quit Claim Deed, recorded on January 4, 2014 in book 1638 at page 101.

20. There is no Power of Attorney on record between MERS and Franklin authorizing MERS to act for and on behalf of Franklin or any other documentation reflecting MERS' authority and powers to execute any assignments on behalf of Franklin.

21. The purported assignment from MERS to Wells Fargo states that the assignment was procured for good and valuable consideration.

22. MERS received no consideration.

23. The foreclosure by Wells Fargo was unlawful.

24. Based upon information and belief, at no time was MERS ever in possession of the Acquistos' mortgage deed and mortgage note.

25. Defendants, based upon information and belief, is without actual possession of the original mortgage note and mortgage deed.

26. Defendants are without ownership of the statutory conditions and without ownership of the statutory power of sale to effectuate a foreclosure against the Acquistos.

27. Defendants do not have nor ever had in their possession a promissory note naming them as payee in contravention to the Uniform Commercial Code.

28. The putative assignments of record to the Defendant do not secure the realty pursuant to Rhode Island law.

29. The Plaintiff has no other remedy at law and will be irreparably harmed by the loss of its premises by advertising and auction.

30. The threatened foreclosure by Defendant is illegal as there is no judicial review of same.

31. That the provisions of R.I.G.L. § 34-11-22, as enforced by R.I.G.L.§ 34-18.1, et al, are unconstitutional because they allow for the taking of the Plaintiff's property rights in14 Grants Mill Road in Cumberland, Rhode Island without judicial review.

WHEREFORE, Plaintiff demands that this Honorable Court:

i. Declare that the Plaintiff is the true and lawful owner of 14 Grants Mill Road, Cumberland, Rhode Island.

ii. Enjoin and restrain the Defendants from continuing or initiating any eviction actions against the Plaintiff until the title to the property in dispute is cleared.

iii. Otherwise permanently enjoin and restrain the Defendants from initiating, pursuing, or filing any further foreclosure actions, eviction actions, or otherwise exercising or demonstrating any scintilla of ownership of the demised premises located at 14 Grants Mill Road in Cumberland, Rhode Island.

iv. Declare that the mortgage deeds do not secure the promissory note.

v. Declare that the assignments on record to be null and void under Rhode Island law;

vi. Declare that Plaintiff owns the premises in fee simple at 14 Grants Mill Road, Cumberland, Rhode Island, and that its title is superior to the claims of the Defendants.

vii. Declare the provisions of R.I.G.L. § 34-11-22, as enforced by R.I.G.L.§ 34-18.1, et al, are unconstitutional because they allow for the taking of the Plaintiff's property rights in14 Grants Mill Road in Cumberland, Rhode Island without judicial review.

viii. Award the Plaintiff reasonable attorney's fees and costs,

ix. Grant such other relief which is just and equitable.

Plaintiff,
By its Attorney,

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